



ITG News

Keeping First Nations Informed



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Message From The Director

As I write, we have just completed the initial meetings to listen to tribal input on the development of an IRS/Tribal Consultation Policy. The 12 meetings held during the past nine months took us to every area of Indian Country. Every one of them provided us with valuable ideas and was an enriching experience. I was particularly pleased by the enthusiastic response we received from many of the participants, and the open exchange of ideas not only gave us critical information from which to begin to frame a policy, but also gave us feedback on the successes and failures of our current relationship with tribes.

I want to thank each of you that took the time to contribute to this process. I realize that many of you were not able to join us. I also realize that many of you may still wish to submit comments and share ideas. That opportunity will arise starting in late January as we embark on the second phase of the policy development process.

By January 31st we will post a summary of each of the 12 meetings on our web site at www.irs.gov/tribes. I encourage each of you to review the comments contained therein. We will incorporate a link that will enable further comments to be submitted for a 90 day period, so that everyone can provide feedback on the input from the meetings. Following that period, we will begin to create a draft Consultation Policy that will be further shared for comment as we proceed to the final stages.

Once again, thanks to everyone who has participated to date. I look forward to the continuing involvement by all interested parties as we craft a policy that best meets the needs of all parties.

Christie Jacobs



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To add your name or e-mail address to our mailing list, please contact us via e-mail at robert.d.bixby@irs.gov, or call Robert Bixby at (920) 433-3810

*Account or Tax Questions??
Call Customer Account Services at
1-877-829-5500*



On-Line Employment Tax Guide

Employees from the office of Indian Tribal Governments recently completed a detailed Employment Tax Guide for Tribal Governments that has been posted to the ITG Internet site at www.irs.gov/tribes. The final document contains extensive narrative on withholding, deposit, and return filing requirements, as well as discussion on taxable benefits and remittance issues. Detailed examples are included as an aid to the proper completion of various forms.

We hope that this Guide is a useful reference source. We intend to update it regularly so that it remains current. We welcome your comments, as well as suggestions for further enhancements to both this on-line guide and our web site in general.

Federal Unemployment Tax

The Consolidated Appropriations Act of 2000 provided that tribal entities did not have to pay Federal Unemployment Tax (FUTA) or file Forms 940 if they participated in State Unemployment Tax (SUTA) programs under either a contributory or reimbursement basis. While SUTA participation could result in savings to tribes, the Act also mandated that the electing tribal entity remain in compliance with the state programs in order to secure relief from FUTA. Any failure to pay amounts due to the state unemployment program results in the reactivation of the requirement to pay federal unemployment tax.

While it may seem that this change is relatively simple, it has added complexities. One issue is the need for the IRS and State Unemployment agencies to exchange information on tribal participation and compliance with SUTA. An additional complexity is the need to ensure that our records accurately reflect the filing requirement for each tribal entity, and are continually updated as SUTA participation and compliance changes.

As a result of these complexities, we have encountered several situations where tribes have received IRS notices soliciting Form 940, even though they are participating in SUTA and are in full compliance. We have determined that most of these notices are in error, and we are completing steps to correct our records. We apologize for any inconvenience, but we cannot guarantee that additional errors will not occur. If your entity receives a notice regarding Form 940, but is participating in SUTA and is in full compliance, **please contact your ITG Specialist as soon as possible**. We will investigate the matter, and either make the necessary correction in our records, or advise you why the notice was received.

Our web site at www.irs.gov/tribes contains an extensive listing of Frequently Asked Questions, that may assist you in resolving issues, including employment tax questions. The site also allows for the submission of e-mail inquiries if you cannot locate an answer, or cannot reach your assigned ITG Specialist for assistance.



Tax Schemes in Indian Country

Abusive schemes to avoid taxation are a current area of focus by both the Internal Revenue Service and Congress. While tax shelters and offshore schemes have existed for several decades, they are receiving renewed interest in an era of globalization of our economy, and tight fiscal constraints for both businesses and governments.

Promoters of schemes to avoid or evade taxation have continually devised new “products” to market to anyone interested in saving money (and that will always be a large audience). In recent years, they have focused some attention on Indian tribes, with particular emphasis on exploiting their tax status as a government. The schemes include, but are not limited to:

- § joint ventures between tribes and outside parties, where income, deductions, and capital gains are not allocated between the parties during the life of the venture in the same manner as the amount of each party’s investment,
- § the misuse of sections of the law intended to benefit tribal entities, such as attempting to secure relief from FUTA by misrepresenting an entity as being tribally-owned, and
- § the misuse of tribal sovereignty or tribal enterprises to attempt to hide financial transactions from scrutiny by regulatory authorities.

If you are approached by someone who purports to have a business opportunity that is “too good to be true”, you need to be wary. Key considerations should include:

- § Is this the type of venture that governments usually enter?
- § Is the venture adequately supported by a reliable legal opinion from a disinterested third party?
- § Is the financial return equally balanced between the tribe and outside participants?
- § Is there substance to the transaction, or is it principally motivated as a tax avoidance scheme?
- § Is the promoter promising revenue to the tribe in exchange for tax savings to a third party?
- § What oversight role in the venture will the tribe have?

The office of Indian Tribal Governments wants to work with tribes to ensure that promoters of abusive schemes do not gain a foothold in Indian Country. To that end, we encourage you to contact us if you are approached by anyone promoting what appears to be an abusive scheme. We will be creating a link on our web site that will include updates on identified schemes, as well as an e-mail link to report any schemes. In the interim, you can contact Ken Voght by telephone at (716) 686-4860, or by e-mail at kenneth.g.voght@irs.gov to discuss or report schemes.

The office of Indian Tribal Governments is forming a special unit to work with tribes on this issue. Our Abuse Detection And Prevention Team welcomes the involvement of any tribal stakeholders in addressing this area, and ensuring that outside parties do not attempt to use tribal sovereignty and status as a cover for illegal or unethical activities. By partnering together in this area we can meet the interests of all governments in protecting revenues and mitigating potential problems for the future.



Coin-Operated Devices Are Not Subject to Excise Wagering Tax

Congress imposed a federal excise tax on wagering in the 1950's. Subsequent rulings identified games that were subject to the tax. Lotteries and pull tabs were two main categories of games historically determined to be subject to excise tax, however, Congress provided an exclusion for state-run lotteries and "live games" such as bingo. Under recent Supreme Court interpretation, tribal governments are not treated like states for purposes of the federal excise tax, although there are current efforts to enact a legislative change in this area.

It is well established that federal excise tax applies to traditional paper pull-tabs sold in tribal casinos. The same holds true for imposition of the occupational tax for individuals who sell paper pull- tabs, and the occupational tax for tribal gaming establishments. This article is written, as the issue now exists, without regard to any potential legislative remedy that may exclude wagering tax for tribal governments.

In recent years, there has been an evolution of pull-tab games from the traditional box of paper tabs, to highly sophisticated mechanical and electronic gaming machines. A question can arise as to whether wagers attributable to pull-tab machines are also subject to the federal excise tax. Because there are no recent rulings or case law on this subject, we made an analysis of all available guidance.

The Internal Revenue Code contains an exemption from the federal excise tax for wagers placed in coin-operated devices. Coin-operated devices were defined in the IRC for years beginning before July 1, 1980. For the purpose of determining what is a coin-operated device, the Treasury Regulations and several revenue rulings have examples of exempted coin-operated devices. Coin-operated machines that displayed poker hands or delivered a ticket with a poker hand; crane machines, claws, diggers, or rotary merchandising type devices operated by the insertion of a coin; pinball machines; horoscope machines; and vending machines that dispensed state lottery tickets were all determined to be "coin-operated devices." The law also defines machines operated by token or similar object as the same as a coin-operated device, making no distinction between coin-operated, player club card, token, or similar object.

Pull- tab machines appear to fall squarely within the definition of a coin-operated device as stated in the Treasury Regulations. Therefore, wagers made in coin-operated devices are not subject to federal wagering excise taxes.

In any casino or bingo hall, it is possible to have two categories of pull- tab wagers, those traditional wagers to which excise and occupational taxes still apply, and those excluded by reason of being coin-operated devices. You may be required to file Forms 730, Monthly Tax on Wagering, and annual Forms 11-C, Occupational Tax and Registration Return for Wagering, on traditional pull-tab sales. If you have any questions, please contact your Indian Tribal Government Specialist.

Do you have a question that you would like to see answered in our newsletter?
If so, contact us via e-mail at Robert.D.Bixby@irs.gov.



FUTA Refunds for 2000- Time is Running Out!

Does your Tribe have a refund coming for the year 2000 FUTA tax? If a Tribal employer paid FUTA tax for 2000, participated in a State Unemployment Tax program or reimbursed the State for any benefits paid, and has not yet received a refund of the FUTA, then the answer is probably yes. But time is running out! The statute of limitations for a timely filed 2000 Form 940 Federal Unemployment Tax return expires on January 31, 2004, and if a refund has not been received then a claim must be filed by that date.

The Consolidated Appropriations Act of 2000 provided that tribal entities do not have to pay Federal Unemployment Tax (FUTA) or file Forms 940 if they participate in State Unemployment Tax (SUTA) programs. The transition rule included in the law may eliminate an Indian Tribal government's obligation to pay FUTA taxes for certain services rendered during 2000, but before December 21, of that year. Under the transition rule, an Indian Tribal government has no FUTA tax liability for services performed by its employees if the following conditions are satisfied: (1) the service was performed before December 21, 2000; (2) the tax imposed under FUTA was not paid; and (3) the Indian Tribal government reimburses a State unemployment fund for unemployment benefits actually paid for services performed before December 21, 2000.

The due date for Form 940, for services rendered in 2000, was January 31, 2001 and FUTA taxes deposited during 2000 generally are deemed not paid until that date. Therefore, FUTA tax deposits for services performed from January 1, 2000 through December 20, 2000, were not paid by December 21, 2000, and are therefore not considered paid for purposes of the transition rule.

Since the Consolidated Appropriations Act of 2000 was not passed until December 21, 2000, many tribal employers did not get the word in time and paid their 2000 FUTA tax. ITG has been working to identify any Tribal entities that may have a FUTA refund coming, and we have found a surprising number of Tribal entities that were unaware that they were entitled to a refund.

For additional information, see IRS Announcement 2001-16 at <http://www.irs.gov/pub/irs-irbs/irb01-08.pdf> (Page 67). If you think you may have a FUTA refund coming, or have any questions regarding your FUTA tax, **please contact your ITG Specialist as soon as possible.**

Knowledge Sharing Groups

Earlier this year ITG formed several groups of employee volunteers to do in depth research of issues affecting Tribes and procedures within ITG. The intent of the groups was to insure the consistency and correctness of handling these issues throughout the country. The groups are: Natural Resources, Casino, Government, Employment and Practices. It is hoped that these groups will increase expertise in the subject areas and provide in depth sources of information for all ITG specialists.

The Natural Resource group is researching issues regarding such topics as income derived directly from allotted lands and treaty fishing. The Casino group is reviewing and expanding on issues directly arising from the operation of casinos such as reporting requirements. The Governmental group is working on issues related to Tribal governments. Employment is working on employment tax related issues. The Practices group is concerned mainly with internal best practices and procedures within ITG.

To ensure that the fruits of this work are also available to our customers, the Tribes, the frequently asked questions
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(FAQs) on the ITG website, are being reviewed and revised to reflect the findings of the knowledge sharing groups. As the research continues, the FAQs will continue to be updated as necessary. It is hoped that the knowledge sharing groups will be an ongoing part of ITG and continue to meet the needs of the Tribes and ITG. The FAQs are available to everyone at www.irs.gov/tribes.

If you have any questions about these groups or have any suggestions regarding issues that you feel need in depth research, please feel free to contact your specialist.

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Telephone, Internet, & Mailing Address

- **Call: Customer Account Services** toll free **877-829-5500**
- **Visit: Indian Tribal Governments** Web site at **www.irs.gov/tribes**
- **Write: Internal Revenue Service**

Indian Tribal Governments SE:T:GE:ITG

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Federal Tax Calendar for First Quarter 2004

January 2004

SUN	MON	TUE	WED	THU	FRI	SAT
				1	2	3
4	5 * Payroll date 12/27-12/30	6	7 * Payroll date 12/31-1/2	8	9 * Payroll date 1/3-1/6	10 Employees report December tips to employer
11	12 Employees report December tips to employer	13	14 * Payroll date 1/7-1/9	15 ** Monthly payroll/non-payroll tax deposit for December	16 * Payroll date 1/10-1/13	17
18	19	20	21	22 * Payroll date 1/14-1/16	23 * Payroll date 1/17-1/20	24
25	26	27	28 * Payroll date 1/21-1/23	29	30 * Payroll date 1/24-1/27	31

February 2004

SUN	MON	TUE	WED	THU	FRI	SAT
1	2 Issue Forms W-2/W-2G/1099 to recipients of income	3	4 * Payroll date 1/28-1/30	5	6 * Payroll date 1/31-2/3	7
8	9	10 Employees report January tips to employer	11 * Payroll date 2/4-2/6	12	13 * Payroll date 2/7-2/10	14
15	16	17 ** Monthly payroll/non-payroll tax deposit for January	18	19 * Payroll date 2/11-2/13	20 * Payroll date 2/14-2/17	21
22	23	24	25 * Payroll date 2/18-2/20	26	27 * Payroll date 2/21-2/24	28
29						

* = Make a Payroll Deposit if you are under the semi-weekly deposit rule.

** = Make a Monthly Deposit if you qualify under that rule.

NOTE: Deposits made through EFTPS are due one day prior to the dates listed.

March 2004

SUN	MON	TUE	WED	THU	FRI	SAT
	1 File Forms W-3 and 1096 filed by paper or magnetic media	2	3 * Payroll date 2/25-2/27	4	5 * Payroll date 2/28-3/2	6
7	8	9	10 * Payroll date 3/3-3/5 Employees report February tips to employer	11	12 * Payroll date 3/6-3/9	13
14	15 ** Monthly payroll/non-payroll tax deposit for February	16	17 * Payroll date 3/10-3/12	18	19 * Payroll date 3/13-3/16	20
21	22	23	24 * Payroll date 3/17-3/19	25	26 * Payroll date 3/20-3/23	27
28	29	30	31 * Payroll date 3/24-3/26 File Forms W-3 and 1096 filed electronically			

*= Make a Payroll Deposit if you are under the semi-weekly deposit rule.

**= Make a Monthly Deposit if you qualify under that rule.

NOTE: Deposits made through EFTPS are due one day prior to

Return Filing Dates

By February 2

File Form 941 for the fourth quarter of 2003. If the tax was deposited in full and on time, file by February 10.

File Form 940 if not participating and compliant with State Unemployment, or not an entity 100% owned by the tribe. If the tax was deposited in full and on time, file by February 10.

File Form 730 on applicable wagers accepted during December 2003.

File Form 945 for 2003. If the tax was deposited in full and on time, file by February 10.

By March 1

File Form 730 for applicable wagers accepted during January 2004.

File Form 8027 for food and beverage establishments meeting the 80 equivalent hour test.

By March 31

File Form 730 for applicable wagers accepted during February 2004.

For entities with Tip Rate Determination Agreement or a Gaming Industry Tip Compliance Agreement, file the annual report required by the agreement.